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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, submitted in accordance with Human Rights Council resolution 19/6.

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Report of the Special Rapporteur in the field of cultural rights

Summary

In the present report, the Special Rapporteur in the field of cultural rights considers the impact commercial advertising and marketing practices have on the enjoyment of cultural rights, with a particular focus on freedom of thought, opinion and expression, cultural diversity and ways of life, the rights of children with respect to education and leisure, academic and artistic freedom and the right to participate in cultural life and to enjoy the arts.

Examining new trends in advertising and marketing strategies, the Special Rapporteur is concerned by the increasingly blurred line between commercial advertising and other content, especially in the areas of culture and education. An overall concern relates to the disproportionate presence of commercial advertising and marketing in public spaces, the myriad advertisements and marketing messages people receive daily, the dissemination of such communications using a large variety of media in a systematic and integrated way and the resort to techniques aimed at circumventing individual rational decision-making.

The report concludes that States should protect people from undue levels of commercial advertising and marketing while increasing the space for not-for-profit expressions. Within the framework of article 19 of the International Covenant on Civil and Political Rights and based on the view that commercial messaging may be granted less protection than other forms of speech, the Special Rapporteur recommends that States regulate the area more effectively. Of particular note is the recommendation to ban all commercial advertising and marketing in public and private schools.

I. Introduction

1. Cultural rights are the rights of each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their worldview and the meanings they assign to their existence and development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. They also encompass the right to access and enjoy cultural heritage and resources that allow such identification and development processes to take place.

2. Commercial advertising and marketing practices encompass a diversity of tools and methods to sell and promote services or products. Adapting quickly to new technologies, these practices constantly evolve, using both overt and less overt messaging. Recognizing different forms of advertising and clearly distinguishing between commercial advertising and other content is increasingly difficult. The myriad commercial messages people receive on a daily basis is striking, as is the large variety of media used in a systematic and integrated way.

3. Commercial advertising and marketing practices have an increasing impact on the cultural and symbolic landscapes we inhabit and more widely on our cultural diversity. Always aiming to sell, this commercial messaging has the potential to deeply influence the philosophical beliefs of people and their aspirations, as well as cultural values and practices, from food consumption models to burial rituals, including tastes and beauty canons.

4. Innumerable factors influence people's choices and philosophies. The human rights-based approach supports the free sharing of ideas and world visions. As expressed in United Nations Educational, Scientific and Cultural Organization (UNESCO) instruments, cultural diversity can be protected and promoted only if human rights and fundamental freedom, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed.

5. On this premise, the Special Rapporteur, mandated by the Human Rights Council to identify possible obstacles to the promotion and protection of cultural rights, decided to address the potential impact of commercial advertising and marketing practices on cultural rights. Today, the dominance of specific narratives and world views promoted through commercial advertising and marketing in public spaces, the family and private spheres, combined with an increased deployment of techniques that may influence people at a subconscious level, raises particular concerns in terms of freedom of thought, opinion and, more widely, cultural freedom.

6. To elicit the views of States and other stakeholders, the Special Rapporteur disseminated a questionnaire on the impact of advertising and marketing practices on the enjoyment of cultural rights. Responses were received from 27 States, 16 national human rights institutions and 5 other stakeholders.[1] The Special Rapporteur also convened an experts' meeting on the issue on 28 and 29 October 2013 in New York (see annex). She is grateful to all those who contributed.

[1] Available from www.ohchr.org/EN/Issues/CulturalRights/Pages/impactofadvertisingandmarketing.aspx.

II. Legal framework

A. Relevant human rights provisions

7. Commercial advertising and marketing practices are generally considered to fall to some extent under provisions protecting freedom of expression, such as article 19 of the Universal Declaration of Human Rights and article 19 (2) of the International Covenant on Civil and Political Rights, which states that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. In general comment 34, the Human Rights Committee stressed that the right to freedom of expression "may also include commercial advertising" (CCPR/C/GC/34, para. 11).

8. Hence, the regulation of commercial advertising and marketing practices should follow the principles enunciated in international and regional instruments regarding possible limitations to freedom of expression. In accordance with article 19 (3) of the International Covenant on Civil and Political Rights, restrictions shall only be such as are provided for by law and are necessary for respect of the rights or reputations of others. The Special Rapporteur notes that the rights to freedom of thought, opinion and expression, the right to privacy and family life, the rights of women, children, minorities and indigenous peoples, the rights to food, health, education, leisure and to take part in cultural life, as well as artistic freedom, as set out in regional and international human rights instruments, deserve particular attention in this respect.

9. Article 19 (3) of the International Covenant on Civil and Political Rights also provides that restrictions may be necessary for protecting national security, public order, public health or morals. The Human Rights Committee, in general comment No. 22, stressed that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition(CCPR/C/21/Rev.1/Add.4, para. 8). According to the Committee, it may be permissible in certain circumstances to regulate speech-making in a particular public place (CCPR/C/GC/34, para. 31).

10. Restrictions to freedom of expression should always be the least restrictive and be proportionate to achieving the purported aim. The Special Rapporteur stresses, however, that commercial advertising and marketing may be granted less protection than other forms of speech.

11. The European Court of Human Rights, recognizing that information of a commercial nature cannot be excluded from the scope of article 10 of the European Convention on Human Rights,[2] considered that States have a greater margin of appreciation to impose restrictions on freedom of expression in commercial matters.[3]

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[2] See Markt Intern Verlag GmbH and Klaus Beermann, 1989, para. 26 and Casado Coca v. Spain, 1994.

[3] See "Freedom of expression in Europe: case- law concerning article 10 of the European Convention on Human Rights", Council of Europe Publishing, 2001.

B. Relevant instruments of the United Nations Educational, Scientific and Cultural Organization

12. Article 6 of the UNESCO Universal Declaration on Cultural Diversity states:

> While ensuring the free flow of ideas by word and image care should be exercised so that all cultures can express themselves and make themselves known. Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.

13. In its preamble, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions recognizes that the diversity of cultural expressions, including traditional cultural expressions, is an important factor that allows individuals and peoples to express and to share with others their ideas and values. According to article 2, cultural diversity can be protected and promoted only if human rights and fundamental freedom, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed.

C. Standards applicable to business enterprises

14. The Guiding Principles on Business and Human Rights offer a general framework regarding States' duty to protect against human rights abuses by business enterprises and the corporate responsibility to respect human rights (see A/HRC/17/31).

15. More detailed instruments relevant to the issue of advertising are also available. In particular, the Children's Rights and Business Principles were released jointly by the United Nations Children's Fund (UNICEF), the United Nations Global Compact and Save the Children in 2013. Principle 6 calls upon corporations to ensure that communications and marketing do not have an adverse impact on children's rights; comply with the standards of business conduct in World Health Assembly instruments regarding marketing and health; and use marketing that raises awareness of and promotes children's rights, positive self-esteem, healthy lifestyles and non-violent values.

16. The Committee on the Rights of the Child, in its general comment 16, stressed the duty of States to ensure that business activities and operations do not have an adverse impact on children's rights, mentioning specifically marketing to children of products with a potential long-term impact on their health. The Committee noted that children may regard marketing and advertisements as truthful and unbiased, and recommended that States adopt appropriate regulations, encourage business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions (see CRC/C/GC/16, paras. 19 and 59).

17. Rules have also been adopted for television broadcasters. Directive 2010/13 of the European Union, for example, sets minimum rules and standards aiming to protect minors and human dignity. In particular, audiovisual commercial communications must be readily recognizable and surreptitious audiovisual

commercial messaging and subliminal techniques are prohibited. The directive also stipulates that the transmission of audiovisual media services should ensure respect for cultural and linguistic diversity. The 1989 European Convention on Transfrontier Television contains similar provisions.

D. Standards at the national level

18. Responses to the questionnaire and other data indicate a variety of regimes concerning advertising. Some countries[4] distinguish between commercial and non-commercial speech, with the latter usually being granted a higher level of protection. In many cases, a main obligation is that advertising be clearly identifiable as such; however, reports indicate that tests with the participation of targeted consumers are rarely carried out to ensure this.

19. Some countries[5] have specific laws on advertising indicating, for all media and issues, what is considered to be inappropriate and unlawful advertising. In the absence of such specific laws, provisions are found in legislation related to health, child protection, urban development, environmental protection and countering discrimination, for example. In other countries,[6] however, most details, including specific groups of people with special protection, are included in non-binding codes. Hence, one characteristic of the advertising and marketing sector is the coexistence of regulation and self-regulation, the latter generally inspired by the Consolidated International Chamber of Commerce (ICC) Code of Advertising and Marketing Communication Practice.

20. Areas traditionally regulated by States include the advertising of tobacco, alcohol, firearms and medical products and the protection of specific groups of people, such as women, persons with disabilities, children, minorities and indigenous peoples. In addition, practices such as comparative advertising or misleading and false advertising are often prohibited, and data protection is regulated to some extent.

21. Codes of conduct adopted by advertising agencies and the media provide ethical and behavioural rules. Whether medium-specific or covering all media, codes usually stipulate that advertising should not be misleading, create discrimination or incite violence and must be obviously distinguishable from editorial content. Issues covered include decency, honesty, fair competition, social responsibility, truthfulness, comparisons, denigration, testimonials, safety and health, children, data protection and privacy.

22. The multiplicity of State regulations and industry codes makes understanding and usage extremely difficult. For example, codes do not cover all aspects of advertising and the same advertising campaign can be covered by several codes for different media. This creates uncertainty for companies as well as citizens and consumer interest groups, with the latter unsure of where and how to lodge a

[4] Including Colombia, Italy, Portugal, Qatar, the United States of America, and Venezuela (Bolivarian Republic of).

[5] Azerbaijan, Georgia, Guatemala and Lithuania.

[6] Australia, Chile, Uganda and the United States of America.

complaint. There is a lack of transparency in how the various regulations and self-regulation codes relate to each other and their implementation.[7]

23. The Special Rapporteur is concerned about the confusion that can result concerning the hierarchy of norms, where and how to file complaints and who has the authority to penalize violations. While States' responses indicate that a number of bodies have monitoring or disciplinary powers, whether those bodies can impartially address complaints is unclear. The number of cases addressed seems minimal.

24. Some aspects of advertising and marketing practices, such as "neuromarketing", are rarely covered by specific regulations. Responses to the questionnaire indicate that States have not yet accorded this issue priority status.

25. Market research is self-regulated through the 2007 ICC/European Society for Opinion and Marketing Research International Code on Market and Social Research, article 9 of the Consolidated ICC Code and other codes.[8]

III. Advertising and marketing practices: selected cross-cutting issues

A. Evolution of advertising and marketing practices

26. Today, people receive an ever-increasing number of commercial messages disseminated in a systematic and integrated manner across multiple media, in the public and private spheres, in physical and digital spaces. While varying from one country to another, the level of commercial advertising seems to be on the rise everywhere, deploying increasingly sophisticated strategies, resulting in a progressively blurred line between advertising and other content, especially in the areas of culture and education.

27. New forms and techniques of advertising and marketing have appeared, including:

(a) Digital advertising and marketing using electronic devices, such as computers, tablets, mobile phones, digital billboards and games, to engage with consumers and business partners;

(b) Viral and social media advertising and marketing, rapidly spreading on the Internet through the use of existing social networks or by contracting individuals to enter online communication forums for the specific purpose of promoting a product;

(c) The use of "brand ambassadors", acting, for example, in schools and universities;

(d) Embedded advertising, inserting a product or service within television programmes or series, movies, music, videos, games or school activities;

(e) Native advertising (or branded/sponsored content), in which advertisers sponsor or create editorial-like content;

[7] Jillian Pitt. "A tangled web: marketing to children", Consumer Focus, 2010.

[8] For example, the Market Research Society Code of Conduct.

(f) Online behavioural advertising that tracks consumers' online activities over time (including searches conducted, web pages visited and content viewed) to supply them with targeted advertising;

(g) Many advertisers claim they use neuromarketing, including brain imaging, to elaborate advertising and marketing strategies.

28. The power of advertising to influence individual choices demands a careful assessment of the means advertisers use, taking into consideration in particular the rights of people to privacy and to freedom of thought, opinion and expression, as enshrined in particular in articles 17 to 19 of the International Covenant on Civil and Political Rights, as well as their rights to education and to participate in cultural life, as protected in particular in articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights.

29. In the past, advertising was mainly informative. That changed in the 1920s[9] and today much contemporary advertising focuses on the link between emotional responses and decision-making, benefiting from advances in behavioural sciences and playing on subconscious desires.

30. Surreptitious communications (misleading the public about their advertising nature) and subliminal techniques (enabling messages to be received below the level of conscious awareness) are prohibited in some countries as well as in some international and regional instruments, in particular in Europe. Not all countries have taken that step, however, leading to the circumvention of this basic and important principle by the advertising and marketing strategies described above.

31. The scientific community in particular has expressed concern about neuromarketing, or the use of advances in the neurosciences to develop commercial advertising and marketing strategies. The neurosciences encompass all disciplines that study the nervous system, including biology, chemistry, genetics, computer science and psychology. The aim is to send messages directly to the brain, thereby circumventing rational decision-making. Some States, including France, have limited the use of brain-imaging techniques to scientific, medical and judiciary usage, specifically excluding use in advertising. Others, including Slovakia, consider that existing prohibitions of subliminal messages apply equally to neuromarketing practices (see also the response of Bosnia and Herzegovina).

32. Loud sound effects or moving screens in public spaces are particularly intrusive. This technology exploits the fact that any motion picture at the periphery of our visual field automatically captures our attention, triggering increased levels of alertness and stress that promote the storage of the message. Some advertising screens contain sensors measuring the intensity of the individual's gaze, known as eye tracking, involving people in large-scale advertising experimentation without their prior and informed consent.[10] Many other techniques, such as extreme repetition of the same commercial message on multiple media, also raise concerns regarding the right to freedom of thought and opinion.

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[9] Edward Bernays' book *Propaganda* (Ig Publishing, New York, 1928) is deemed central to the new approach.

[10] Guillaume Dumas, Mehdi Khamassi, Karim Ndiaye, Yves Jouffe, Luc Foubert et Camille Roth, "Procès des Déboulonneurs de pub: et la liberté de (non) réception?", *Le Monde*, 26 June 2012, and L'histoire leur donnera raison: "Procès de six 'déboulonneurs' antipublicitaires", Collectif des déboulonneurs, Paris, 2012.

33. The issue of consent needs to be included in discussions about the impact of advertising and marketing strategies on human rights. For example, some people claim a right not to receive advertising,[11] while others call for provisions to opt out from exposure to advertising and for the development of software to block online advertising.[12]

34. More generally, it is often claimed that consumers relinquish their privacy and consent to becoming targets of advertising, in particular digital advertising, to benefit from lower prices for products and services. The Special Rapporteur notes, however, that in many cases consumers and citizens are not fully aware that their privacy is being breached or to what extent and what this entails in terms of their freedom of thought and opinion.

B. Concentration of media and of advertising groups

35. The right to information and the right to participate in cultural life imply the possibility of gaining access to diverse information, opinions and cultural expressions, as well as a plurality of media sources. Concentration of ownership of media industries is on the increase, however, diminishing the diversity of media content and plurality of programmes in cultural, social and political terms.[13] Both the Human Rights Committee (see CCPR/C/GC/34, para. 40) and the Special Rapporteur on freedom of opinion and expression (see, e.g., A/HRC/26/30, paras. 66-68) have expressed their concerns on this issue.

36. Countries have adopted measures to limit media concentration and protect media pluralism, in particular by promoting diversity of content or establishing a "must carry" principle, requiring, for example, that cable television systems dedicate some of their channels to local broadcasting stations.

37. These issues merit further inquiry and attention, given the increased dependency of print and audiovisual media on advertising revenue coupled with the increased concentration of advertising groups. A few groups have enormous power in negotiating advertising spaces, favouring media that best fit the interests of their client companies, meaning media that do not depict their clients negatively and proactively promote a suitable environment to enhance the consumption of their products and/or services. This can result in wide self-censorship of journalists and media owners, having a significant impact on editorial content and cultural programming.[14]

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[11] Jean Morange, "Affichage publicitaire et liberté d'expression: éléments de réflexion", 2007, and Maurice Pergnier, "Espace publicitaire et espace public: éléments de réflexion", 2006.

[12] Jon Alexander, Tom Crompton and Guy Shrubsole, "Think of me as evil? Opening the ethical debates in advertising", Public Interest Research Centre and WWF-UK, 2011.

[13] Zrinjka Perusko and Helena Popoviç, "Media concentration trends in Central and Eastern Europe" in Karol Jakubowicz, Miklós Sükösd (eds.), *Finding the Right Place on the Map: Central and Eastern European Media Change in a Global Perspective*. See also A/HRC/14/23/Add.2.

[14] Marie Bénilde, *On achète bien les cerveaux: la publicité et les médias*, Paris, Raisons d'agir, 2007, chaps. 3 and 4, and Lawrence Soley, "Private censorship, corporate power", in Robert Atkins and Svetlana Mintcheva (eds.), *Censoring Culture: Contemporary Threats to Free Expression*, 2006.

C. Not-for-profit advertising

38. The distinction between commercial advertising and not-for-profit advertising, such as state and other political, social or religious advertising, is sometimes unclear. Nevertheless, it is important to ask whether, how and to what extent stakeholders other than companies have, and should have, access to advertising space to counterbalance the views disseminated by the corporate sector, which are largely articulated around the promotion of the consumption of (mainly manufactured) products and services. Commercial advertising, not least that of large corporations, is not neutral in terms of the values, world visions and aspirations it promotes.

1. Advertising by political, religious or civil society groups

39. Regulating political communication is common and includes restrictions on advertising (see A/HRC/26/30, paras. 51-54). Many countries prohibit paid "political advertising" on certain media, especially broadcast media, outside of strictly regulated electoral periods. Many broadcasting authorities also refuse to air messages promoting religious or political content that are specifically labelled as such.

40. From a human rights and cultural rights perspective, the aim must be to protect the democratic debate from distortion by powerful financial groups enjoying advantageous access to influential media, to protect the formation of public opinion from undue commercial influence, to promote equality of opportunity among different societal perspectives and viewpoints and to facilitate the editorial independence of radio and television broadcasters.[15] The European Court of Human Rights, for example, found that a ban on paid political advertising in broadcasting was legitimate and proportionate.[16] In an earlier case however, the Court found a breach of article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms when a national broadcaster banned an advertisement by an association for animal protection.[17] The issue clearly needs further discussion.

41. The Special Rapporteur was also informed of restricted or lesser access for not-for-profit advertising on billboards.

2. State or government advertising

42. The Inter-American Commission on Human Rights stressed that government advertising may contribute to diversity when large corporate advertisers, as major providers of media revenue, place advertisements exclusively in sources favourable to their business interests, avoiding outlets that report on financial scandals, environmental damage or labour disputes. In any event, to mitigate state selectivity in advertising, the legal rules regarding government advertising must incorporate the principles of public interest, transparency, accountability, non-discrimination, efficiency and the good use of public funds.[18] The Human Rights Committee, for its part, stated that government advertisements should not have the effect of impeding

[15] See the arguments of the Federal Tribunal of Switzerland in European Court of Human Rights, VgT v. Switzerland (No. 2), 2009, Grand Chamber, para. 14. See also the response of Switzerland on this issue.

[16] Animal Defenders International v. the United Kingdom, 2013.

[17] VgT v. Switzerland, 2009.

[18] Inter-American Commission on Human Rights, "Principles on the regulation of government advertising and freedom of expression", 2011, para. 39.

freedom of expression and that private media must not be put at a disadvantage compared to public media in such matters as access to means of dissemination and distribution of and access to news (see CCPR/C/GC/34, para. 41).

43. Some governments use advertising methods and agencies to convey public health messages and promote human rights. Some also use neuroscience and behavioural research in designing public policies to achieve positive change through prevention rather than prescription and sanctions.[19] These developments, called social marketing, are becoming a powerful worldwide trend and are promising in terms of their ability to effectively counter behaviours detrimental to, for example, public health, the environment or human rights, using the same means as companies seeking to sell products and services. Such techniques should be used with caution, however, taking into consideration individual freedom and democratic principles.

IV. Impact of commercial advertising and marketing practices on the enjoyment of cultural rights

A. Advertising, ways of life and cultural diversity

1. Impact on cultural diversity

44. As early as 1985, a UNESCO report indicated that by restructuring consumption habits, the advertising industry imposed exogenous, partly alien ways of life on people of developing countries.[20] In 2009, another UNESCO report affirmed that there could be no doubt that the development of transnational markets, linked to the rise of consumerism promoted by skilful advertising, was having a significant impact on local cultures, which were finding it difficult to compete in an increasingly global marketplace.[21]

45. Advertising and marketing strategies have become more sophisticated and brands have developed their own identities. Using a combination of meanings, symbols and values and having unmatched outreach worldwide, they provide codified messages to people and have succeeded in becoming some of the reference points for people's perceptions about themselves, others and the world in general.

46. Advertising campaigns usually rely on a few themes: happiness, youth, success, status, luxury, fashion and beauty, and mostly suggest that solutions to human problems are to be found in individual consumption and status symbols. Theories of consumer culture and cultivation reveal how the media and advertising can "cultivate" values such as materialism.[22] They stress that individual consumers do not make rational choices in the context of "free" markets. Instead, they operate within a sociocultural, economic and political framework that shapes and limits how

[19] Richard Thaler and Cass Sunstein, *Nudge: Improving Decisions about Health, Wealth and Happiness*, Yale University Press, 2008.

[20] UNESCO, *Mass Communications and the Advertising Industry*, Paris, 1985.

[21] Ibid., *Investing in Cultural Diversity and Intercultural Dialogue*, Paris, 2009.

[22] Agnes Nairn, Christine Griffin and Patricia Gaya Wicks (2008), "Children's use of brand symbolism: a consumer culture theory approach". *European Journal of Marketing*, vol. 42, No. 5/6.

they think, feel and act in the contemporary marketplace.[23] Advertising and marketing practices increasingly help to shape this framework.

47. The misrepresentation, underrepresentation and stereotyping in advertising of certain social classes and groups is also of concern. Furthermore, global advertising campaigns promoting one single advertising message for all countries, according to observers, have an even more detrimental impact on cultural diversity, including linguistic diversity.[24]

2. Promotion of detrimental behaviours and attitudes

48. Many products, behaviours and attitudes promoted by commercial advertising are harmful to people's health and social relationships, as well as to the environment. Examples most frequently mentioned include tobacco smoking, which advertising associates with the positive values of freedom and independence; the stereotyping of women; and the promotion of food with a high content of fat, sugar or salt. These are not the only examples, and some argue that, overall, it is the omnipresent and aggressive promotion of lifestyles based on intense consumption that is detrimental to human societies and the environment.

49. Despite some progress, advertising still commonly portrays women as housewives, mothers or sex symbols, with sometimes detrimental impacts on the health of young girls, such as anorexia.[25] Some States have introduced regulations on stereotypes and body image in advertising, for example requiring disclosing when images have been digitally modified (see the responses of Argentina, Denmark and Mexico).

50. Food advertising and promotion have contributed to shifting dietary patterns towards those closely linked with non-communicable diseases. By promoting mainly manufactured products with a high content of fat, sugar or salt, food and beverage companies contribute to altering previous eating and cooking practices that often were healthier and more ecologically sound. Both the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/26/31, paras. 22-25) and the Special Rapporteur on the right to food recently expressed their concerns on these matters.[26] Some measures have been adopted in particular within the framework of the World Health Organization (WHO).[27] For example, some States have prohibited companies from advertising junk food to children below a certain age, while others have prohibited the inclusion of toys with children's food.

51. Safeguards need to be made more effective. For example, health messages at the bottom of food advertisements do not attract sufficient attention, as shown by tracking the eyes of people watching television. These would be more effective if their content, form and layout changed during the advertising, if they appeared on

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[23] Eric J. Arnould and Craig J. Thompson, "Consumer culture theory: twenty years of research", *Journal of Consumer Research*, vol. 31, No. 4, 2005.

[24] Noreen Janus, "Advertising and global culture", *Cultural Survival*, 1983.

[25] Council of Europe resolution 1557 (2007).

[26] See WHO, "Global status report on non-communicable diseases", 2010, chap. 2.

[27] WHO, "Set of recommendations on the marketing of foods and non-alcoholic beverages to children", 2010. See also WHO, "International Code of Marketing of Breast-milk Substitutes", 1981.

the screen on their own and were read out by different voices. More generally, informing people is not enough to bring about behavioural change.

52. In general, online regulations have not kept pace with offline regulations, enabling companies to effectively dodge the law by relocating their advertising to digital spaces.

53. Regulations have lagged behind the ingenuity of advertisers. For example, the banning of traditional tobacco advertising is insufficient. A study measuring brain reactions to a range of stimulants (cigarette packets, advertising posters, promotional items and brand exposure through sponsorship) show that sponsorship images, such as using a colour code for items even without explicitly mentioning the brand, stimulate areas of the brain associated with the desire to smoke. These results invite considerations of ways to regulate all forms of indirect advertising and sponsorship.

3. Use of cultural expressions, particularly those of indigenous peoples, for commercial purposes

54. The constant search for novelty and culturally resonant meanings in advertising has led to the appropriation of signs and images wherever they are found, including in indigenous cultures, with usage frequently distorting the original symbology. Indigenous groups have resisted companies seeking to incorporate indigenous imagery into their products, services, advertising or marketing,[28] with some success.

55. National laws should be in conformity with international standards, including those contained in the United Nations Declaration on the Rights of Indigenous Peoples, in particular article 31, in which the right of indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions is recognized. Good practices include specific regulation to protect indigenous communities (see the response of Colombia).

B. Advertising, children and education

1. Children

56. The Convention on the Rights of the Child protects the rights of children to freedom of expression (article 13), freedom of thought, conscience and religion (article 14), play (article 31), education (article 29) and health, including adequate nutrition (articles 24 and 27). Pursuant to article 17, States recognize the important function mass media perform and are committed to ensuring that children have access to information and material from a diversity of national and international sources, especially those aimed at promoting their social, spiritual and moral well-being and physical and mental health. States also are committed to encouraging the development of appropriate guidelines for the protection of children from information and materials injurious to their well-being, bearing in mind the provisions of articles 13 and 18. Of note, article 18 (1) provides that States shall ensure the recognition of the principle that parents have the primary responsibility

[28] Sarah La Voi, "Cultural heritage tug of war: balancing preservation interests and commercial rights", *DePaul Law Review*, vol. 53, No. 928, 2003.

for the upbringing and development of their children. In accordance with article 3 (1), in all actions concerning children, the best interests of the child shall be a primary consideration.

57. In its general comment 17 on the right to leisure (CRC/C/GC/17), the Committee on the Rights of the Child recognized that the commercialization of children's play environment influences how children engage in recreation, cultural and artistic activities. The Committee also expressed concern that:

> many children and their families are exposed to increasing levels of unregulated commercialization and marketing by toy and game manufacturers. Parents are pressured to purchase a growing number of products which may be harmful to their children's development or are antithetical to creative play .... Global marketing can also serve to weaken children's participation in the traditional cultural and artistic life of their community.[29]

Many studies commissioned by governments and civil society groups support such assessments and underline that commercial advertising heightens children's insecurities, accentuates inequalities and distorts their gender socializations.[30]

58. Most countries grant children special protection in relation to commercial advertising. Some prohibit television advertising at certain hours or in connection with children's programmes. One principal element in legislation and the ICC code is that marketing directed at children should be clearly distinguishable from other content. A few countries prohibit all forms of advertising to children, regardless of the medium or means used.[31]

59. The definition of a child for the purposes of commercial advertising in state legislation and self-regulatory codes varies from persons under the age of 12 to those under 18. Sometimes the age is not specified. The 12 years of age criterion is based on academic assessments indicating that by the age of 12 children have developed their behaviour as consumers, effectively recognize advertising and can critically assess advertisements. Academic and civil society organizations have asked for a ban of all advertisement to primary-school children.[32]

60. Whether children of a certain age have developed adequate "cognitive defences" to implicitly processed commercial messages is contested, however.[33]

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[29] See also Susan Linn, "Commercialism in Children's Lives", in *State of the World 2010: Transforming Cultures from Consumerism to Sustainability*, Worldwatch Institute, 2010.

[30] National Education Policy Center, "Effectively embedded: schools and the machinery of modern marketing", thirteenth annual report on schoolhouse commercializing trends: 2009-2010, University of Colorado at Boulder; United Kingdom Department for Chilodren, Schools and Families and Department for Culture, Media and Sport, "The impact of the commercial world on children's wellbeing: report of an independent assessment", 2009; M. Barbovschi, L. Green and S. Vandoninck (eds.) "Innovative approaches for investigating how children understand risk in new media: dealing with methodological and ethical challenges", EU Kids Online, London School of Economics and Political Science, 2013.

[31] For example in Brazil, and in Canada, Denmark and Norway for children under 12.

[32] Ipsos MORI, in partnership with Agnes Nairn, "Children's well-being in UK, Sweden and Spain: the role of inequality and materialism", 2011; "Leave our kids alone campaign", www.leaveourkidsalone.org.

[33] Agnes Nairn and Cordelia Fine (2008), "Who's messing with my mind? The implications of dual-process models for the ethics of advertising to children", *International Journal of Advertising*, vol. 27, No. 3, 2008.

Given the emotive nature of most television advertising, the manner in which most digital advertising is processed and the development of new forms of advertising, such as embedded, viral and native advertising, assumptions about cognitive defence need thorough investigation. To the extent that any cognitive defence exists, advertising seeks to circumvent it.

61. Special attention is required in sectors escaping regulations on advertising to children, such as in the recruitment of children as brand ambassadors on social media[34] and advertising on mobile devices and in video games. Children are particularly vulnerable to such practices.[35]

62. In this context, initiatives to increase media literacy are praiseworthy. Their effectiveness, however, is largely untested.

2. Advertising in schools

63. Most international human rights standards and national laws on education place a legal obligation on children to attend school. Schools therefore constitute a distinct cultural space, deserving special protection from commercial influence.

64. The growing presence of advertising in schools is documented.[36] Numerous examples exist of company logos appearing on school materials, including textbooks and educational material, as well as on school premises; company logos as the central focus of sponsored lessons; television in schools providing "educational content" with advertising; shows by characters representing brands; vending machines or coffee bars occupying school space to sell and promote particular brands and/or products; contests organized by banks; sponsorship of school buses, sports fields or school names; branded road safety material; incentive programmes with supermarkets offering vouchers for school laptops or cameras; school fund-raising strategies encouraging families to enter into commercial relations with companies that donate to schools; exclusive agreements granting a company exclusive rights to provide a service and/or product; the recruitment of schoolchildren to serve as brand ambassadors and so on. The Special Rapporteur considers school premises as encompassing not only the school itself, including cafeterias, libraries, playgrounds and sports facilities, but also their immediate vicinity, as well as school buses.

65. Schoolchildren offer a captive and credulous audience. Companies see school-based marketing and advertising as perfectly suited to "branding" children at an early age. Marketing and advertising programmes are normalized and given legitimacy when embedded in the school context; the strategies deployed lead children to interact and engage with particular brands during school time.[30] Furthermore, the sponsoring of school material and educational content reduces the freedom educational institutions have for developing the most appropriate and highest-quality curriculum for their students.

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[34] Denmark has prohibited this practice.

[35] Agnes Nairn and Haiming Hang, "Advergames: it's not child's play", Family and Parenting Institute, London, 2012; www.agnesnairn.co.uk/policy_reports/advergames-its-not-childs-play.pdf.

[36] For example in Brazil, by the Alana Institute: http://criancaeconsumo.org.br/, or in the United States of America by the Commercialism in Education Research Unit: http://nepc.colorado.edu/ceru-home.

66. Advertising in schools remains unregulated in many countries (see the responses of Chile, Guatemala, Paraguay, Qatar, Togo, Uganda, and the Defensor del Pueblo, Plurinational State of Bolivia). Some States (Greece, France, Serbia and Slovakia) prohibit or limit advertising in public schools on the basis of the principles of neutrality, purpose of the institution and child protection (see also the response of the National Human Rights Committee of Qatar). Others, including Algeria, prohibit all advertising for commercial purposes, but the dividing line between commercial and non-commercial messaging remains unclear. Some States, including El Salvador, have intervened to stop situations that have gone beyond what seems reasonable; in others, such as Finland, parents have the right to decide the kind of marketing permissible in schools, with a strict prohibition against disseminating pupils' contacts for marketing purposes. In other situations, sponsoring is allowed, but the material cannot contain product marketing. WHO, for its part, recommends that children not be exposed to any form of marketing of foods high in saturated fats, trans-fatty acids, free sugars or salt, in particular when they are in schools and on playgrounds.[37]

67. Even when restrictions on advertising are in place, difficulties or loopholes in implementation arise from general legal provisions that require localized implementation by municipalities or school boards that are sometimes unaware of the regulations. Difficulties in interpretation of the law may also emerge (see the response of Slovakia).

68. For States, local authorities and parents, opposing advertising and marketing in schools can be difficult. In some contexts, this may impede the ability to secure sufficient funds to construct and/or maintain school infrastructure, provide pupils with books, lunches or teachers, organize outdoors activities and games and so on. Economic recession and cuts in budgets increase the pressure on authorities, who are then more likely to resort to negotiating agreements with companies. There are also numerous cases, however, of schools authorizing advertising and marketing practices on their premises without deriving significant or, indeed, any, financial gain as a result.

69. The Special Rapporteur stresses that private sponsorship can indeed help in securing funds needed for the effective functioning of schools. This should not, however, result in advertising and marketing materials or activities entering school premises or being targeted at children. The Special Rapporteur is of the view that companies may still advertise the fact that they sponsor schools, but should do so outside schools. The only exception to this may be when specific materials, such as computers or musical instruments bearing logos or brands of the companies producing them, are donated to schools (known as manufacturers' or distributors' primary consumer product package labels).

70. Taking into consideration article 13 of the International Covenant on Economic, Social and Cultural Rights, which refers to the minimum educational standards as may be laid down or approved by the State, the Special Rapporteur considers that the prohibition of advertising should be applied in both public and private schools.

[37] WHO, "Set of recommendations on the marketing of foods and non-alcoholic beverages to children", 2010.

3. Advertising in universities

71. Commercial advertising and marketing in universities is similar to such activities in schools but raise different issues, as young adults are deemed to have sufficient levels of awareness and critical thinking. Most country responses indicated that, as independent bodies, universities may regulate advertising and marketing according to internal codes (see the responses of Bolivia (Plurinational State of) Brazil, Finland, France, Guatemala, Honduras, Nicaragua, Portugal, Serbia, Togo and Uganda). Universities very rarely seem to prohibit some forms of advertising.

72. Universities are spaces where students should learn to develop a spirit of enquiry and free thinking. Hence, authorities should ensure that advertising and marketing on university campuses remain clearly distinguishable and within reasonable limits, and that the best interests of students and the academic community remain paramount.

73. Literature indicates that university-business agreements may include conditionality, such as "non-disparagement clauses", prohibiting members of the university community from criticizing the company involved.[38] Such restrictions on the right to the freedom of expression of students and academics should not be tolerated.

74. The promotion of specific products and services through the sponsorship of academic research is a growing trend. It can take the form of sponsorship of departments and professorships and commissioning of academic studies that are tantamount to market research. The Special Rapporteur considers that some criteria need to be established to prevent conflicts of interest, and to guarantee academic freedom and the rights of students to information and an education.

75. Of specific concern is the sponsoring of university textbooks and attempts to influence their content, for example in medical sciences. Such sponsorship should be made fully transparent so that students may consider their textbooks with a critical eye and seek access to other sources of information.

C. Advertising and public space

76. Public spaces are spheres for deliberation, cultural exchange, social cohesiveness and diversity. The growing commercialization and privatization of public spaces pose significant challenges to the realization of the right to participate in cultural life and to the protection of public spaces reflecting cultural diversity. People engaging in creative activities encounter manifold difficulties in using public space.

1. Outdoor advertising

77. National laws regarding the conservation of historic sites or monuments or the protection of the environment or landscape, for example, provide guidelines regarding the size and location of advertisements, their aesthetics and obligations to be followed (see the responses of France, Guatemala and Rwanda). Such laws can also regulate not-for-profit advertisement and murals on private property. Although

[38] Naomi Klein, *No Logo: Taking Aim at the Brand Bullies*, Knopf Canada, 1999.

some laws provide for fines in case of illegal advertisements and specify procedures for their removal (see the response of the National Commission of Uganda), civil society groups report that these are often not effective (see the responses of Résistance à l'agression publicitaire and Paysages de France).

78. Responses to the questionnaire show that in most countries, outdoor advertising falls under the jurisdiction of local governments or municipal departments. Some municipalities regulate the permissible size, number and zones for outdoor advertisement and determine areas for public interest information and political advertising. Agreements may be concluded with companies to provide bus shelters and public toilets, for example, in exchange for the right to place advertisements on them (see the response of Paysages de France).

79. The uncontrolled expansion of advertisements has prompted some national and local authorities to take action (see the responses of Colombia and El Salvador). In 2006, for example, the adoption by the city of Sao Paulo, Brazil, of a "clean city" law resulted in the removal of 15,000 advertisements before the city adopted new regulations setting out clear rules.

80. In various countries, civil society organizations denounce excessive advertising and illegal billboards. Written requests asking authorities to act against the latter have been largely ignored, allowing billboards to remain in place for years before tribunals reach a decision (see the response of Paysages de France). Instead, in some cases, those denouncing unlawful billboards have found themselves facing defamation lawsuits by advertising companies.[39] Some groups also engage in direct actions to remove unlawful billboards or simply to protest against the proliferation of billboards. Alternatively, some groups have transformed, mocked and distorted the advertising messages disseminated on billboards, in direct response to their messages and to contest the values and aspirations they promote.

81. The imbalance in power in these situations is of concern. The few companies holding the worldwide market for outdoor advertising, including in bus or train stations and airports, can end up deciding what is displayed in the public space.[40]

82. The question is one of proportion: the number of outdoor advertisements, their size, locations and the technologies used, such as digital billboards and screens, render advertisements omnipresent and inescapable. Billboards obstruct people's engagement with their environment, including parks, built heritage or the landscape, and, by exhorting people to become mere consumers, adversely affect their sense of citizenship. The Special Rapporteur notes with concern the numerous cases of people having the windows of their houses covered by large billboards, despite their opposition, and of trees cut down to ensure greater visibility of billboards.

83. Billboards and other outdoor advertising devices affect far more than the private property on which they are installed; indeed, the commercial value of billboards is determined by the number of viewers passing by. Observers argue that, in reality, companies purchase public space rather than merely hire private property (e.g., a wall on a private building).

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[39] See the case of Defi France v. Paysages de France, Criminal Tribunal of Grenoble, 2013; Court of Appeal of Grenoble, 2004; and Cour de Cassation, 2005.

[40] For instance, CBS Outdoor and JC Decaux refused to display an image chosen by the Imperial War Museum in Manchester , 2013; see http://www.bbc.com/news/entertainment-arts-24565194.

84. Another growing trend is to sell companies the right to select names for prominent buildings, streets and sports halls. The impact this has on the symbolic landscape of cities and people's perceptions should be considered, and public discussion and the participation of local residents in decision-making ensured. Some States, including El Salvador, have adopted laws to impede this trend.

2. Artistic creation and the public space

85. Corporations, artists claim, try to co-opt public space used by graffiti artists, for example, for commercial messaging.[41] Indeed, advertising companies have demanded that murals be regulated by the same codes applicable to advertisement billboards.

86. While acknowledging that States have different approaches to graffiti, the Special Rapporteur is concerned by the sharp disparity between the paucity of action and enabling mechanisms for removing illegal billboards compared with the far greater resources devoted to removing illegal graffiti, with sanctions in the form of fines and even jail sentences.

D. Art and cultural programming, artistic expression and creativity

1. Advertising on television

87. Television remains a key medium for advertisement, and advertisements are the principal source of income for television channels. To attract advertisers, channels need to attract the target audience of companies. Studies reveal the impact of advertising on programme content, for instance channels not offering content to groups with low purchasing power and the managing director of a television channel averring that the aim was to sell "available parts of human brains" to advertisers.[42] It is further argued that the increased representation of violence in programmes reinforces the efficiency of advertising: individuals subjected to emotional stress retain messages delivered to them better. In addition, a number of biochemical reactions make people more inclined to consume food with a high fat and sugar content.[43]

88. Embedded advertising on television is also of concern.[44] Article 13 (2) of the WHO Framework Convention on Tobacco Control requires parties to implement a comprehensive ban on tobacco advertising, promotion and sponsorship or to apply restrictions that are as comprehensive as possible. The guidelines for implementing this provision recognize that the depiction of tobacco in films is a form of promotion. Prohibitive or restrictive measures need not interfere with legitimate types of expression, however, such as journalistic, artistic or academic expression or legitimate social or political commentary. Nonetheless, States should take steps to prevent the use of journalistic, artistic or academic expression or social or political commentary for the promotion of tobacco use or tobacco products.

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[41] Gwenaëlle Gobé, *King of the Line* (documentary film).

[42] Les associés d'EIM, *Les dirigeants face au changement: baromètre 2004*, Les Éditions du huitième jour, 2004.

[43] Michel Desmurget, *TV lobotomie: La vérité scientifique sur les effets de la télévision*, Max Milo, 2011.

[44] WHO, *Smoke-free Movies: From Evidence to Action*, 2011.

89. Of note, European Union directive 2010/13 considers as prohibited surreptitious communication:

> the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.

It further states that sponsoring programmes or audiovisual media services shall not affect the editorial independence of the media service provider; they shall not directly encourage the purchase or rental of goods; and viewers shall be informed of the sponsorship agreement. Product placement is restricted. The European Convention on Transfrontier Television of 1989 also requires the regulation of advertising.

2. Commercial sponsorship of the arts

90. As noted in the Special Rapporteur's report on artistic freedom, cuts in public spending have enhanced the importance of private sponsorship of the arts (A/HRC/23/34, para. 70). While tax incentives may be a welcome means of encouraging private sponsorship of the arts and stimulating cultural production, the balance should always be in favour of artistic freedom and creativity. It is important to safeguard against sponsors reorienting activities to be more attractive to the market, and States should ensure that corporate sponsorship does not result in the arts and artists becoming mere advertisers of corporate interests. The desire of corporations to protect a specific logo or brand or to silence criticism of their product may also result in art restrictions. In most countries, private sponsorship of the arts appears to be an unregulated area. The concern is the long-term impact on art and cultural programming and the freedom of expression of artists, including towards corporations.

91. A recent global trend in art museums is "brand exhibitions", which are not only sponsored by, but devoted to, luxury brands, including the representation of their logos or values and the sale of their products in museum stores.[45] This raises a number of questions and concerns regarding the distinction to be made between support and direct advertising, between advertising and other content and in terms of the balance needed between private benefit and public interest, including the right of people to enjoy the arts in spaces sheltered from undue commercial influence.[46]

92. Art institutions use internal measures to review the benefits and risks of collaboration with for-profit companies. Important issues that need to be addressed include the potential impact of collaboration on the good name and/or reputation of the institution; whether the corporation's values, products and services are consistent with those of the institution and its community; and respect for the institution's mission and programme.[47]

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[45] See, e.g., *Louvre pour tous*, "Publi-expositions, des expos publicitaires dans les musées", 17 November 2013.

[46] *Le Monde*, "Quand les marques s'exposent au musée", 8 October 2012.

[47] Association of Art Museum Directors, "Managing the relationship between art museums and corporate sponsors", 2007.

93. To guard against the potential negative consequences of corporate sponsorship, organizations have developed toolkits to assist artists.[48] Some countries have conducted surveys on cultural events, organizations and activities to identify and analyse trends in public and private funding. Such initiatives should be encouraged.

3. Sponsorship and conservation of cultural heritage

94. The presence of a private sponsor of cultural heritage made obvious through oversized logos or advertisements may provoke strong reactions among people who feel that their rights to access cultural heritage or to participate in cultural life have been curtailed. Concerns have also been expressed about the granting of exclusive rights to a sponsor for projects to renovate historical sites.

95. Many countries have laws restricting advertising on and around historical sites or monuments. Recently, however, temporary advertising on scaffolding during renovation has become a practice in several countries. A good practice is using the image of the building in its original or post-renovation state with the name of the sponsor appearing in small print rather than displays directly promoting the sponsor.

V. Conclusions and recommendations

96. **Throughout the world, cultural exchanges stimulate the modification of cultural practices, evolving philosophies and worldviews. The concern is not that change occurs, but rather the disproportionate and omnipresent nature of commercial advertising and marketing. Often backed by strong financial means and privileged access to mass media, and increasingly resorting to techniques that may influence people at a subconscious level, commercial messaging contributes to shifting practices towards consumption and uniformity. This has a significantly impact on creativity and affects cultural and symbolic landscapes — whether physical or digital — and people's cultural values and philosophical beliefs. It is time to acknowledge this phenomenon and to investigate thoroughly the impact on cultural diversity and the right of people to choose their own ways of life.**

97. **States wishing to protect cultural diversity need to protect their societies from undue levels of commercial advertising and marketing while increasing the space for not-for-profit expressions.**

98. **States have a particular responsibility in ensuring that public space remains a sphere for deliberation, cultural exchange, social cohesiveness and diversity. The protection of public space is not the only important issue, however, as commercial advertising and marketing practices have intruded into private spheres and the family.**

99. **While commercial advertising and marketing practices may be protected under the right to freedom of expression, limitation clauses as provided for in article 19 of the International Covenant on Civil and Political Rights apply; in particular, restrictions necessary to ensure respect for the rights of others may be provided by law. The Special Rapporteur notes that the right to freedom of thought, opinion and expression, the right to privacy and family life, the rights**

[48] Arts Sponsorship Toolkit, Business and Arts South Africa, www.basa.co.za/?page_id=52.

of women, children, minorities and indigenous peoples, the right to food, health, education and leisure, the right to take part in cultural life and the right to artistic freedom, as set out in the various regional and international human rights instruments, deserve particular attention in this respect. As underlined by the Human Rights Committee, it may also be permissible in certain circumstances to regulate speech-making in a particular public place.

100. The freedom of thought and opinion, which lies at the heart of human rights, including cultural rights, deserves a particular mention. Although people have their own agency and critical resistance, and while trying to convince someone is not an encroachment on the right to freedom of thought and opinion, and in fact supports democratic debate, the Special Rapporteur is of the view that the increasingly blurred line between commercial advertising and other content, the myriad advertisements and marketing communications people receive daily, the dissemination of such communications through a large variety of media used in a systematic and integrated way and the resort to neuromarketing aimed at circumventing individual rational decision-making raise serious concern.

101. Many States have adopted laws, but commercial advertising and marketing remains mostly self-regulated. This situation is unsatisfactory, leading to poor overall implementation, gaps, inconsistencies and legal uncertainty for both the industry and the public, as well as a paucity of clear, transparent and efficient complaint mechanisms.

102. The Special Rapporteur recommends a number of steps to be adopted within the framework of article 19 of the International Covenant on Civil and Political Rights relating to the right to freedom of expression. Such action is recommended in relation to commercial advertising and marketing only, which, aiming to sell particular services and/or products rather than to express a particular viewpoint or participate in debates of general interest, may be granted a lesser level of protection.

103. The Special Rapporteur recommends in particular that:

(a) States adopt legislation on commercial advertising and marketing that regroups dispersed codes of ethics and clearly refers to the obligation to respect and protect human rights, in particular the right to freedom of thought, opinion and expression, the right to privacy and family life, the rights of women, children, minorities and indigenous peoples, the right to health, food, education and leisure, the right to take part in cultural life and the right to artistic freedom;

(b) Local authorities, in particular municipalities, adopt regulations in their spheres of competency regarding commercial advertising, with reference to human rights standards as mentioned in subparagraph (a) above;

(c) Companies adopt self-regulatory codes, in compliance with human rights standards, establishing a global responsible marketing and advertising policy and prohibiting harmful and unethical advertising, in particular to children;

(d) States, local authorities and bodies responsible for overseeing the implementation of self-regulated codes provide clear, simple and easily

accessible information to their constituents about the legal framework in place, the authorities responsible and the remedies available, with a good initiative being to issue practical guidelines for citizens and consumers of the various rules and codes in place and possible remedies.

104. The Special Rapporteur recommends that legislation, regulations and policies adopted by States and local authorities, where relevant:

(a) Be adopted or amended following consultations with civil society organizations, and not only the corporate sector;

(b) Be geared towards reducing the level of commercial advertising and marketing that people receive daily, indicating in particular what should be considered as unreasonable in terms of, for example, the number, intensity and frequency of advertisements, sound volume, luminosity, location and size, and be aimed at the proactive implementation of environmental and other legislation through the prompt removal of illegal advertising;

(c) Be based on the fundamental principle that commercial advertising and marketing should always be clearly identifiable and distinguishable from other content on all media, in all places and on all supports, and that this be tested with the target audience and be applied to all new advertising strategies, including the use of brand ambassadors and native advertising; ensure that messages are labelled as advertising in an internationally recognized format; and establish a compulsory, clear and uniform system of labelling for all in-game advertising and "advergames";

(d) Prohibit all resort to subliminal and surreptitious methods, and restrict advertising that is processed implicitly, taking into consideration various factors such as the age and capacity of the persons targeted as well as the amount of advertisements they receive, and provide that the example of countries that have restricted brain-imaging techniques to scientific, medical and judiciary usage be followed;

(e) Ban all commercial advertising and marketing in public and private schools and ensure that curricula are independent from commercial interests;

(f) Further identify spaces that should be completely or especially protected from commercial advertising, such as kindergartens, universities, nurseries, hospitals, cemeteries, parks, sports facilities and playgrounds, as well as cultural heritage sites and such cultural institutions as museums, with the banning or drastic limitation of outdoor advertising as an option, as exemplified by several cities in the world;

(g) Prohibit all forms of advertising to children under 12 years of age, regardless of the medium, support or means used, with the possible extension of such prohibition to children under 16 years of age, and ban the practice of child brand ambassadors;

(h) Contain unequivocal definitions, in particular of the various advertising and marketing practices being regulated, measurable targets and strong monitoring mechanisms with meaningful sanctions.

105. **The Special Rapporteur recommends that States:**

(a) **Develop and enhance media and health literacy in schools, while assessing and monitoring the effectiveness of such programmes;**

(b) **Reinforce existing regulations on data privacy in conformity with the International Covenant on Civil and Political Rights, including data collected on the Internet.**

106. **The Special Rapporteur encourages States and relevant stakeholders to organize and participate in public consultations in order:**

(a) **To develop policies and guidelines aimed at reducing the negative impact that the increased concentration of advertising companies and the increased dependency of written and audiovisual media on advertising revenue may have on the free press, editorial content and cultural programming;**

(b) **To define what public space is and how it should be used in a participatory manner;**

(c) **To address the multifaceted issues of sponsorship, including:**

(i) **Sponsorship of primary and secondary schools, universities and academic research, in particular with regard to programme integrity and academic freedom;**

(ii) **Sponsorship of artistic events and exhibits, especially with regard to artistic freedom and the right of people to enjoy the arts in spaces sheltered from commercial influence;**

(iii) **Sponsorship of cultural heritage conservation and renovation, with a view to encouraging the practice of prioritizing educational content (over commercial content) on scaffoldings, sites, and so on;**

(d) **To ensure that spaces for not-for-profit messaging, including in broadcast media and outdoor advertising, are made available within the framework of the right to freedom of expression, the non-discrimination principle and the need to protect the democratic debate from distortion by powerful financial groups or groups enjoying strong financial support;**

(e) **To take positive measures to ensure that a diversity of messages appears in spaces devoted to advertising and to promote equality of opportunity among different societal perspectives and viewpoints.**

Annex

Participants in experts' meeting held in New York, 28 and 29 October 2013

Name	*Affiliation*
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Joseph Fogarty	President, Campaign for Commercial Free Education, Ireland
Gwanaelle Gobe	Filmmaker and artist, United States
Josh Golin	Campaign for Commercial Free Childhood, United States
Hans Haacke	Artist, Germany, United States
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David Ross	Chair, Master of Fine Arts Art Practice, School of Visual Arts, United States
Puvan Selvanathan	Member of the United Nations Working group on business and human rights
Mike Van Graan	Executive Director of the African Arts Institute, ARTerial, South Africa